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FISCAL IMPACT STATEMENT

LS 6800

BILL NUMBER: SB 325

NOTE PREPARED: Jan 1, 2012

BILL AMENDED:

SUBJECT: Arrest and Conviction Records.

FIRST AUTHOR: Sen. Taylor

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Entities to be Petitioned* – It adds prosecuting attorneys to the list of entities that are to be served with a petition to expunge arrest records.
- B. *New Requirements* – It adds requirements for a person to petition to restrict access to conviction records. It changes requirements for a court to grant a petition to restrict access to conviction records.
- C. *Technical Change* – It relocates a section regarding restricted access of arrest records to a new chapter.

Effective Date: July 1, 2012.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: *Summary-* This bill could increase the number of hearings that a criminal court would have to conduct when considering whether to restrict the release of criminal records of a person who has been incarcerated for Class D nonviolent felonies. It would also prevent ex-offenders who have records of arrests or pending charges from having their criminal records restricted from release.

Background – Current law allows a person who has been either arrested, tried, or convicted to petition a court

to either expunge or restrict the release of arrest and criminal records.

Expungement – Arrest records can be sealed or destroyed if a person has been arrested and no criminal charges were filed or all criminal charges have been dropped because of either mistaken identity or if no offense was in fact committed or there was an absence of probable cause. The person would be required to petition the court to have the records expunged.

Restricted Disclosure of Arrest Records – If a person is charged with a crime and one of the following outcomes occurs: (1) the crime is not prosecuted or all charges against the person are dismissed; (2) the person is found not guilty of the charges; or (3) the person was convicted of the crime and the conviction on all charges is subsequently vacated. The person would petition the court for restriction. After the court hears the petition, and allowing time for the prosecuting attorney to oppose the petition, the court may either grant the petition, deny the petition, or set the petition for a hearing. If the court grants the petition, the court shall prohibit the Indiana State Police from disclosing the person's arrest records and any involvement in criminal and juvenile court proceedings.

Restricted Access to Conviction Records – If after eight years have passed, a person who was arrested and convicted of a crime and who completes the sentence and any additional obligations, may petition the sentencing court to order the State Police to restrict access to arrest and criminal records. Under current law, these crimes are restricted to Class D felonies that did not result in injury to another person. The court is required to order the Department of Correction and each law enforcement agency or person who treated or incarcerated the person from releasing any records about the person to a noncriminal justice agency. Neither the prosecuting attorney involved in the prosecution of the person nor any criminal justice agencies involved in the treatment or incarceration of the person are legally permitted to object to the petition.

Proposal of the Bill to Change Restricted Access to Criminal Records– Under current law, no hearing is required for the court to grant restricted access to criminal records. As proposed, this bill would add a series of steps that the court and the person would have to take prior to ordering records to be restricted:

(1) **Notification to Prosecuting Attorney and Criminal Justice Agencies –** A copy of the petition must be sent to the criminal justice agencies involved with the person and the prosecuting attorney who prosecuted the case. The agencies and the prosecuting attorney must be permitted to respond to the petition and file an objection to the petition if they wish.

(2) **Added Hearings –** The court may either grant the petition, schedule a hearing, or deny the petition. If the court denies the petition, the court is required to schedule a hearing.

(3) **More Conditions to Restrict Release of Criminal Records –** The court would not be permitted to order restriction of release of criminal records if the person has a record of arrests or if there are pending charges against the person. In addition, this bill gives the court discretion in permitting the restriction of criminal records if the person was between the ages of 18 and 21 and had a consensual sexual relationship with a child between the ages of 14 and 16. Under current law, the court would be required to issue the restricted access even if these conditions existed.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction; Indiana State Police.

Local Agencies Affected: Prosecuting attorneys; county sheriffs; trial courts with criminal jurisdiction.

Information Sources:

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